A **DR KOAY CHENG BOON**

v.

MAJLIS PERUBATAN MALAYSIA

B FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN CJ (MALAYA)
MOHD GHAZALI YUSOFF FCJ
SURIYADI HALIM OMAR FCJ
[CIVIL APPEAL NO: 02-19-2011(W)]
C 5 JANUARY 2012

CONSTITUTIONAL LAW: *Courts - Appeals - Appeal from High Court to Court of Appeal - Whether decision of High Court under s. 31(1) of the Medical Act 1971 ('the Act') final - Whether Court of*
D *Appeal could hear "all" appeals from High Court - Whether s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 inconsistent with art. 121(1B) of the Federal Constitution*

JURISDICTION: *Court of Appeal - Appeal from High Court -*
E *Decision of High Court pursuant to s. 31(1) of the Medical Act 1971 ('the Act') - Whether decision of High Court final - Whether Court of Appeal could hear "all" appeals from High Court - Whether s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 inconsistent with art. 121(1B) of the Federal Constitution*

F ***STATUTORY INTERPRETATION:*** *Construction of statutes - Intention of Parliament - Section 31(2) of the Medical Act 1971 and s. 68(1)(d) of the Courts of Judicature Act 1964 - Whether federal laws - Whether clearly provided for finality in decision of High Court - Whether inconsistent with art. 121(1B) of the Federal Constitution*

G

WORDS AND PHRASES: *"jurisdiction" - Article 121(1B) of the Federal Constitution - Meaning of*

The appellant was found guilty of infamous conduct in a
H professional respect under s. 29(2)(b) of the Medical Act 1971 ('the 1971 Act') by the respondent ('MMC') premised upon an inquiry of a complaint made against the appellant for engaging in a sexual relationship with a patient who is the wife of the complainant. Consequently, the MMC ordered the appellant to be
I suspended from the Register under s. 30(ii) of the 1971 Act for a period of two years. The appellant's appeal to the High Court

pursuant to s. 31(1) of the 1971 Act was dismissed on the grounds that there had been no breach of natural justice and there had been a proper appreciation of the evidence led during the enquiry. The appellant thus appealed to the Court of Appeal. The Court of Appeal held that it did not have the jurisdiction to hear the appeal in light of s. 31(2) of the 1971 Act which provides that the decision of the High Court in any appeal from the decision of the MMC in the exercise of its disciplinary jurisdiction shall be final, and therefore dismissed the appeal. The appellant appealed to the Federal Court. Leave was granted to the appellant to appeal on the following questions of law: (i) whether s. 31(2) of the 1971 Act and s. 68(1)(d) of the Courts of Judicature Act 1964 ('CJA') were inconsistent with art. 121(1B) of the Federal Constitution ('Constitution') and therefore void; and (ii) if the answer was in the affirmative, whether the Court of Appeal has unlimited jurisdiction to hear an appeal from a decision of the High Court made pursuant to s. 31(1) of the 1971 Act.

Held (dismissing the appeal with costs)
Per Zulkefli Makinudin CJ (Malaya):

(1) The word "jurisdiction" in art. 121(1B) of the Constitution, in a narrow and strict meaning, merely confers on the Court of Appeal the authority and power to hear and determine appeals. Further, art. 121(1B)(a) does not provide for the Court of Appeal to hear "all" or "any" appeals from the High Court. In the circumstances, the Court of Appeal's jurisdiction, in the present case, to hear appeals from the High Court should be exercised by reference to the CJA. It was clear from the reading of s. 4 of the CJA that the legal status accorded to the CJA is much higher than any other Act of Parliament. (paras 10-12)

(2) Based on a purposive interpretation, art. 121(1B) of the Constitution must be read together with all the relevant articles contained in the Constitution. Hence, art. 121(1B) read together with art. 74 and section 4 of the Ninth Schedule of the Constitution conferred power on the Legislature to enact laws to regulate and determine the jurisdiction of the Court of Appeal. It would therefore follow that s. 68(1)(d) of the CJA cannot be unconstitutional as the said section was enacted by virtue of the powers conferred on the Legislature. (*Latifah Mat Zin v. Rosmawati Sharibun & Anor,* refd; *Yong Teck Lee v. Harris Salleh & Anor*, foll). (see paras 13-14)

A **Per Mohd Ghazali Yusoff FCJ:**

(1) A statute is the written will of the Legislature and it is the fundamental rule of interpretation of a statute that it should be expounded according to the intent of Parliament. The
B courts must use the literal rule where a clear meaning of a statute will allow it, *ie*, interpret the statute literally, according to its ordinary plain meaning. In the instant appeal, the 1971 Act makes it clear that it was the intention of the Parliament that there shall be no further appeal from the High Court.
C (paras 48 & 49)

(2) Further, s. 68(1)(d) of the CJA clearly provides that no appeal shall be brought to the Court of Appeal where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final. The CJA is a
D federal law which was intended by the Legislature to be read together with art. 121(1B) of the Constitution. The 1971 Act is also an Act of Parliament and hence falls within the meaning of "federal law" as provided for in art. 160(2) of the
E Constitution. Therefore, reading art. 121(1B) with s. 68 of the CJA and premised on the clear and unequivocal wordings of s. 31(2) of the 1971 Act, the decision of the High Court is final and not appealable. (*Yong Teck Lee v. Harris Salleh & Anor*, foll). (para 51)

F **Per Suriyadi Halim Omar FCJ:**

(1) The words "jurisdiction to determine appeals from decisions of a High Court" are not substantive laws that lay down the unqualified primary appellate jurisdiction of the Court of
G Appeal as suggested by the appellant, but mere illustrations. The words "that is to say" which come after the words "the Court of Appeal shall have the following jurisdiction", supplied the instances which may furnish guidance and clue as to its appeal jurisdiction. Hence, the curtailment of his rights to
H appeal to the Court of Appeal was not contrary to art. 121(1B) as the illustration showed that the jurisdiction of the Court of Appeal was subject to being conferred with jurisdiction under any federal law. Without conferment of jurisdiction, the Court of Appeal is deprived of the jurisdiction
I to determine all appeals from the High Court under the 1971 Act; it can never be interpretatively right that an illustration can be construed as substantive law. (paras 64-66)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah didapati bersalah kerana berkelakuan buruk dari segi profesion di bawah s. 29(2)(b) Akta Perubatan 1971 ('Akta 1971') oleh responden ('MMC') berdasarkan kepada suatu siasatan terhadap aduan yang dibuat terhadap perayu kerana terlibat dalam hubungan seksual dengan seorang pesakit yang merupakan isteri kepada pengadu. Dengan itu MMC memerintahkan perayu digantung daripada daftar di bawah s. 30(ii) Akta 1971 bagi tempoh selama dua tahun. Rayuan perayu ke Mahkamah Tinggi di bawah s. 31(1) Akta 1971 ditolak atas alasan bahawa tidak ada pelanggaran keadilan semulajadi dan keterangan yang dikemukakan semasa siasatan telah dipertimbangkan dengan sewajarnya. Perayu dengan demikian merayu ke Mahkamah Rayuan. Mahkamah Rayuan memutuskan bahawa ia tidak mempunyai bidang kuasa untuk membicarakan rayuan tersebut berdasarkan s. 31(2) Akta 1971 yang memperuntukkan bahawa keputusan Mahkamah Tinggi dalam mana-mana rayuan daripada keputusan MMC dalam melaksanakan bidang kuasa tatatertib adalah muktamad, dan dengan itu menolak rayuan tersebut. Perayu merayu ke Mahkamah Persekutuan. Kebenaran diberikan kepada perayu untuk merayu atas persoalan undang-undang seperti berikut: (i) sama ada s. 31(2) Akta 1971 dan s. 68(1)(d) Akta Mahkamah Kehakiman 1964 ('AMK') tidak konsisten dengan perkara 121(1B) Perlembagaan Persekutuan ('Perlembagaan') dan dengan itu batal; dan (ii) jika jawapan adalah 'ya', sama ada Mahkamah Rayuan mempunyai bidang kuasa yang tidak terhad untuk mendengar rayuan daripada keputusan Mahkamah Tinggi yang dibuat di bawah s. 31(1) Akta 1971.

Diputuskan (menolak rayuan dengan kos)
Oleh Zulkefli Makinuddin HB (Malaya):

(1) Perkataan "bidang kuasa" dalam perkara 121(1B) Perlembagaan, dalam maksud terhad dan ketat, semata-mata memberikan kepada Mahkamah Rayuan autoriti dan kuasa untuk mendengar dan memutuskan rayuan-rayuan. Selanjutnya, perkara 121(1B) tidak memperuntukkan kepada Mahkamah Rayuan untuk mendengar "kesemua" atau "apa-apa" rayuan daripada Mahkamah Tinggi. Dalam keadaan tersebut, bidang kuasa Mahkamah Rayuan, di dalam kes ini, untuk mendengar rayuan daripada Mahkamah Tinggi perlu dilaksanakan dengan merujuk kepada AMK. Adalah jelas daripada membaca s. 4

AMK bahawa kedudukan undang-undang yang diberikan kepada AMK adalah lebih tinggi daripada mana-mana Akta Parlimen.

(2) Berdasarkan kepada tafsiran maksud, perkara 121(1B) Perlembagaan mesti dibaca bersama dengan kesemua perkara-perkara relevan yang terkandung di dalam Perlembagaan. Maka perkara 121(1B) dibaca bersama dengan perkara 74 dan perenggan 4 Jadual Kesembilan Perlembagaan memberikan kuasa kepada Perundangan untuk menggubal undang-undang untuk mengawal dan menentukan bidang kuasa Mahkamah Rayuan. Dengan demikian, s. 68(1)(d) AMK tidak boleh menjadi tidak berperlembagaan kerana seksyen tersebut digubal dengan kuasa yang diberikan kepada Badan Perundangan. (*Latifah Mat Zin v. Rosmawati Sharibun & Anor,* dirujuk.; *Yong Teck Lee v. Harris Salleh & Anor*, diikuti.)

Oleh Mohd Ghazali Yusoff HMP:

(1) Statut adalah kemahuan bertulis Badan Perundangan dan menjadi peraturan pentafsiran asas statut bahawa ia sepatutnya ditafsirkan menurut niat Parlimen. Mahkamah perlu menggunakan kaedah literal di mana maksud jelas statut membenarkannya iaitu mentafsir statut secara literal, mengikut maksud biasa dan jelas. Di dalam rayuan ini, Akta 1971 dengan jelas memperuntukkan bahawa adalah niat Parlimen bahawa tidak wajar ada rayuan lanjut daripada Mahkamah Tinggi.

(2) Selanjutnya, s. 68(1)(d) AMK jelas memperuntukkan bahawa tidak ada rayuan yang boleh dikemukakan ke Mahkamah Rayuan di mana, melalui apa-apa undang-undang bertulis pada masa ini yang berkuatkuasa, penghakiman atau perintah Mahkamah Tinggi adalah jelas diisytiharkan sebagai muktamad. AMK adalah undang-undang persekutuan yang diniatkan oleh Badan Perundangan untuk dibaca bersama dengan perkara 121(1B) Perlembagaan. Akta 1971 juga adalah Akta Parlimen dan dengan itu terangkum dalam maksud "undang-undang persekutuan" seperti yang diperuntukkan dalam perkara 160(2) Perlembagaan. Dengan itu, membaca perkara 121(1B) dengan s. 68 AMK dan berdasarkan kepada bahasa yang jelas dan tidak bercanggah dalam s. 31(2) Akta 1971, keputusan Mahkamah Tinggi adalah muktamad dan tidak boleh dirayu. (*Yong Teck Lee v. Harris Salleh & Anor*, diikuti).

Oleh Suriyadi Halim Omar HMP:

(1) Perkataan "bidang kuasa untuk menentukan rayuan daripada keputusan Mahkamah Tinggi" bukanlah undang-undang substantif yang menyenaraikan bidang kuasa asas tidak bersyarat Mahkamah Rayuan seperti yang disarankan oleh perayu, tetapi hanyalah ilustrasi semata-mata. Perkataan "iaitu" yang diletakkan selepas perkataan "Mahkamah Rayuan perlu mempunyai bidang kuasa berikut", memberikan contoh yang boleh memberikan panduan dan maklumat mengenai bidang kuasa rayuannya. Maka, pengurangan kuasa perayu untuk merayu ke Mahkamah Rayuan tidak bercanggah dengan perkara 121(1B) kerana ilustrasi tersebut menunjukkan bahawa bidang kuasa Mahkamah Rayuan tertakluk kepada pemberian bidang kuasa di bawah undang-undang persekutuan. Tanpa pemberian bidang kuasa, Mahkamah Rayuan tidak berbidang kuasa untuk memutuskan kesemua rayuan daripada Mahkamah Tinggi di bawah Akta 1971; adalah satu salah tafsiran jika dikatakan bahawa ilustrasi boleh ditafsirkan sebagai undang-undang substantif.

Case(s) referred to:

Badan Peguam Malaysia v. Kerajaan Malaysia [2009] 1 CLJ 833 FC ***(foll)***
Bolton v. Law Society [1994] 1 WLR 512 ***(refd)***
Brij Bhukan v. S.D.O AIR 1955 Patna 1(15) ***(refd)***
Dason Gaban v. Zulkifle bin Majun and 21 Other Cases [1982] 1 LNS 41 FC ***(refd)***
Dato Menteri Othman Baginda & Anor v. Dato Ombi Syed Alwi Syed Idrus [1981] 1 MLJ 29 ***(refd)***
Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor (1) [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72 ***(refd)***
Edwards v. Attorney-General for Canada [1930] AC 124 ***(refd)***
Gupta v. General Medical Council [2002] 1 WLR 1691 ***(refd)***
Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 5 CLJ 253 FC ***(refd)***
Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***
N Krishnaraju v. Authorised Officer Land Reforms AIR 1967 Mad 352 ***(refd)***
PP v. Datuk Harun Haji Idris & Ors [1976] 1 LNS 180 HC ***(refd)***
PP v. Ottavio Quattrocchi [2004] 3 CLJ 553 FC ***(refd)***
Reyes v. Dental Board of South Australia (2002) 83 ASR 551 ***(refd)***
Sivarasa Rasiah v. Badan Peguam Malaysia & Anor [2010] 3 CLJ 507 FC ***(refd)***
Sussex Peerage (1844) 11 Cl & Fin 85 ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***
Yong Teck Lee v. Harris Mohd Salleh & Anor [2002] 3 CLJ 422 CA ***(foll)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 4, 50, 67, 68(1)(d)
Election Offences Act 1954, s. 36
Federal Constitution, arts. 4(1), 74, 121(1B)(a), (2)(a), 128, 160(2)
Interpretation Acts 1948 and 1967, ss. 3, 17A
Medical Act 1971, ss. 3(1), (2), 29(1), (2)(b), 30(ii), 31(1), (2)

Other source(s) referred to:
Stroud's Judicial Dictionary of Words and Phrases, 6th edn, p 2646

For the appellant - Tommy Thomas (S Ravindran with him); M/s Sreenevasan Young
For the respondent - Harjinder Kaur (Eric Chong with her); M/s Sharizat Rashid & Lee

[Appeal from Court of Appeal; Civil Appeal No: W-02-393-2009]

[Editor's note: For the Court of Appeal judgment, please see Dr Koay Cheng Boon v. The Malaysian Medical Council [2011] 4 CLJ 849 CA.]

Reported by S Barathi

JUDGMENT

Zulkefli Makinudin CJ (Malaya):

Introduction

[1] This is an appeal by the appellant against the decision of the Court of Appeal in dismissing the appellant's appeal against the decision of the High Court in dismissing the appellant's appeal against the order made by the respondent under s. 30(ii) of the Medical Act 1971 ("the Act"). Leave to appeal was granted by this court on the following two questions:

(i) Whether s. 31(2) of the Medical Act 1971 and s. 68(1)(d) of the Courts of Judicature Act 1964 are inconsistent with art. 121(1B) of the Federal Constitution and therefore void; and

(ii) If the answer is in the affirmative, whether the Court of Appeal has unlimited jurisdiction to hear an appeal from a decision of the High Court made pursuant to section 31(1) of the Medical Act 1971.

Background Facts

[2] The relevant background facts leading to the present appeal before this court are as follows:

(1) A disciplinary proceeding was taken by the respondent, the Malaysian Medical Council against the appellant, a medical practitioner. The appellant was found guilty of infamous conduct in a professional respect under s. 29(2)(b) of the Act by the respondent upon an inquiry of a complaint made against the appellant for engaging in a sexual relationship with a patient, the wife of the complainant. The respondent ordered the appellant to be suspended from the Register under s. 30(ii) of the Act for a period of two (2) years.

(2) Being dissatisfied with the said order the appellant filed an appeal to the High Court pursuant to s. 31(1) of the Act. The learned judge of the High Court dismissed the appellant's appeal and held that there had been no breach of natural justice and there had been a proper appreciation of the evidence led during the disciplinary enquiry.

(3) The appellant appealed against the decision of the High Court to the Court of Appeal. Before the Court of Appeal a preliminary point on the issue of whether the appellant had a right to appeal to the Court of Appeal in the light of s. 31(2) of the Act was raised and addressed by both the parties.

(4) Section 31(1) of the Act provides that any person who is aggrieved by any order made in respect of him by the Medical Council in the exercise of its disciplinary jurisdiction may appeal to the High Court, and the High Court may thereupon, affirm, reverse or vary the order appealed against or may give such direction in the matter as it thinks proper; the cost of the appeal shall be in the discretion of the High Court. Sub-section (2) of s. 31 of the Act however provides that the decision of the High Court shall be final.

(5) Upon hearing arguments, the Court of Appeal held that they did not have the jurisdiction to hear the appeal and that they were bound by earlier decided case authorities which upheld such finality clauses as provided for under s. 31(2) of the Act. The Court of Appeal henceforth dismissed the appeal.

Contention Of The Appellant

[3] It is the contention of the appellant that art. 121(1B)(a) of the Federal Constitution confers on the Court of Appeal the power to hear all appeals from the decision of the High Court or

a judge. It would render all federal statutes including s. 31(2) of the Act which contained provisions which expressly prevent an individual to appeal to the Court of Appeals unconstitutional and unlawful as it is inconsistent with art. 121(1B) of the Federal Constitution.

[4] Learned counsel for the appellant further submitted that the Court in interpreting art. 121(1B) of the Federal Constitution should give it a broad, generous and liberal construction. A number of case authorities were cited for the appellant on this point and we need only refer to the case of *Dato Menteri Othman Baginda & Anor. v. Dato Ombi Syed Alwi Syed Idrus* [1981] 1 MLJ 29 at p. 32 which states as follows:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way – 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v. Fisher*). A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms.' The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney-General of St. Christopher, Nevis and Anguilla v. Reynolds*.

[5] Learned counsel also advanced his argument relying on the principle of a person's constitutional right of access to court. It was contended that the fundamental liberty the framers of the Constitution intended to protect when art. 121(1B) was drafted, was to provide for an appeal to the Court of Appeal against every decision of the High Court. Thus, the right of access to court is

not confined or limited to a party's right to sue in a court of first instance. It extends to challenging a decision of the High Court before the Court of Appeal. Hence, the Malaysian Constitution recognizes the automatic right of every litigant to one tier of appeal which was the *raison detre* of the establishment of the Court of Appeal in 1994 so that an appellate panel of three judges in the intermediate court in the system, the Court of Appeal, would have an opportunity of overturning any wrong decision of a single High Court Judge.

[6] The Federal Court decision in *Sivarasa Rasiah v. Badan Peguam Malaysia* [2010] 3 CLJ 507 was cited by learned counsel which considered the right to access to court as a fundamental liberty under "personal liberty" in art. 5(1) of the Federal Constitution. Gopal Sri Ram, FCJ delivering the judgment of the Federal Court in *Sivarasa* stated:

> … It is now well settled that by the common law of England the right of access to justice is a basic or a constitutional right. See, *Raymond v. Honey* [1983] 1 AC 1, 13; *R v. Secretary of State for the Home Department, ex parte Leech* [1993] All ER 539. In *Thai Trading Co. (a firm) v. Taylor* [1998] 3 All ER 65 at page 69, Millett LJ described it as a fundamental human right. Thus, the common law right of access to justice is part of the 'law' to which Article 5(1) refers. In other words, a law that seeks to deprive life or personal liberty (both concepts being understood in their widest sense) is unconstitutional if it prevents or limits access to the courts.

[7] Before this court, learned counsel further impressed upon us to reconsider the reasoning of the majority decision in the case of *Yong Teck Lee v. Harris Mohd Salleh & Anor.* [2002] 3 CLJ 422. The effect of art. 121(1B) of the Federal Constitution was considered by the Court of Appeal in *Yong Teck Lee* when dealing with s. 36 of the Election Offences Act 1954 which provides that the decision of an Election Judge is final. The majority judgment in *Yong Teck Lee* took the view that s. 36 of the Election Offences Act 1954 did not violate art. 121(1B) of the Federal Constitution. The appellant however takes the stand that the dissenting judgment of KC Vohrah, JCA in *Yong Teck Lee* correctly represents the true constitutional position on this issue.

Decision

[8] The issue before this court is whether the appellant's right to appeal to the Court of Appeal is entrenched in art. 121(1B) of the Federal Constitution. Article 121(1B) of the Federal Constitution provides:

> (1B) There shall be a court which shall be known as the Mahkamah Rayuan (Court of Appeal) and shall have its principal registry at such place as the Yang di-Pertuan Agong may determine, and the Court of Appeal shall have the following jurisdiction, that is to say:
>
> (a) Jurisdiction to determine appeals from decisions of a High Court or a Judge thereof (except decisions of a High Court given by a registrar or other officer of the Court and appealable under federal laws to a judge of the Court); and
>
> (b) Such other jurisdiction as may be conferred by or under federal law.

[9] We reproduce herein the relevant statutory provisions under s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 ("CJA 1964") which specifically deal with appeals. Section 31(2) of the Act provides:

> **31. Appeal against orders of the Council.**
>
> …
>
> (2) The decision of the High Court upon such appeal shall be final.

Section 68(1)(d) of the CJA 1964 provides:

> **68. Non-appealable matters.**
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> …
>
> (d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

[10] In answering the questions posed it is necessary that we first ascertain the meaning of the word "jurisdiction" in the context of art. 121(1B) of the Federal Constitution. I am of the view the word "jurisdiction" in art. 121(1B) of the Federal Constitution should be given a narrow and strict meaning, namely that the said article merely confers on the Court of Appeal the authority and power to hear and determine appeals. Article 121(1B)(a) of the Federal Constitution does not provide for the Court of Appeal to hear "all" or "any" appeals from the High Court. On this point I would refer to the case of *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 wherein Augustine Paul, FCJ *inter alia* held that the word "jurisdiction" in art. 121(2)(a) of the Federal Constitution is to be given a narrow and strict meaning as regards the court's authority and power to hear and determine appeals and not to be construed in a wide sense to mean as to how the court's power to hear and determine appeals is to be exercised.

[11] It is also necessary to identify the source from which the court derived its jurisdiction. In the case of *Badan Peguam Malaysia v. Kerajaan Malaysia* [2009] 1 CLJ 833 this court *inter alia* held as follows:

> The starting point is to identify the sources from which this Court derives its jurisdiction. In our judgment there are three. First, the Federal Constitution; second, Acts of Parliament, third, the common law …
>
> **We turn next to the second source of this Court's jurisdiction, namely Acts of Parliament. Principal amongst these is the Courts of Judicature Act 1964.** (emphasis added)

[12] Based on the above cited case authority, I am of the considered view the Court of Appeal's jurisdiction in the present case to hear appeals from the High Court should be exercised by reference to the CJA 1964. It is to be noted that the legal status accorded to CJA 1964 is much higher than any other Act of Parliament as is clear from the reading of s. 4 of the CJA 1964 which states as follows:

> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

[13] I am of the view adopting a purposive interpretation art. 121(1B) of the Federal Constitution must be read together with all the relevant articles contained in the Federal Constitution. The powers of the Legislature to make federal laws are regulated by art. 74 of the Federal Constitution which provides as follows:

74. Subject matter of federal and state laws

(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say), the First or Third List set out in Ninth Schedule).

(2) …

(3) The power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.

Section 4 of the Ninth Schedule of the Federal Constitution lists out the items which the Legislature is permitted to enact, *inter alia* as follows:

(a) Constitution and organization of all courts other than Syariah Courts;

(b) Jurisdiction and powers of all such courts;

(c) Remuneration and other privileges of the judges and officers presiding over such courts;

(d) Persons entitled to practice before such courts;

(e) …

[14] I am of the view art. 121(1B) of the Federal Constitution read together with art. 74 of the Federal Constitution and section 4 of the Ninth Schedule of the Federal Constitution confer power on the Legislature to enact laws to regulate and determine the jurisdiction of the Court of Appeal. It would therefore follow that s. 68(1)(d) of the CJA 1964 cannot be unconstitutional as s. 68(1)(d) of the said Act was enacted by virtue of the powers conferred on the Legislature. On this point I would refer to the case of *Latifah Mat Zin v. Rosmawati Sharibun & Anor.* [2007] 5 CLJ 253 wherein Abdul Hamid Mohamad, FCJ (as he then was) in interpreting art. 121(1B) of the Federal Constitution said:

Article 121(1B) begins with the words 'There shall be a court which shall be known as the Mahkamah Rayuan (Court of Appeal) …'

In respect of the Court of Appeal, clause (1B) provides that the Court of Appeal 'shall have the following jurisdiction, that is to say:

(a) Jurisdiction to determine appeals from decisions of a High Court or a judge thereof …; and

(b) Such other jurisdiction as may be conferred by or under federal law.'

Here again we notice that while the jurisdiction in (a) is expressly stated, in (b) we will have to look for them in the federal law.

The point to note here is that both courts, civil and syariah, are creatures of statutes. Both owe their existence to statutes, the Federal Constitution, the Acts of Parliament and the State Enactments. Both get their jurisdictions from the statutes, ie, constitution, federal law or State law, as the case may be. *So, it is to the relevant statutes that they should look to determine whether they have jurisdiction or not.* (emphasis added)

[15] As regards the question of whether the majority judgment or the dissenting judgment of the Court of Appeal in *Yong Teck Lee* had made the correct interpretation of art. 121(1B) of the Federal Constitution to represent the true constitutional position of the said article, I am more inclined to agree with the decision and reasoning arrived at by the majority judgment. In *Yong Teck Lee* the majority judgment in interpreting art. 121(1B) of the Federal Constitution and reading with ss. 50, 67 and 68 of the CJA 1964 had adopted the "purposive approach" by relying on the provision of s. 17A of the Interpretation Acts 1948 and 1967 so as to achieve a harmonious construction amongst various provisions of a statute.

Section 17A of the Interpretation Acts 1948 and 1967 provides:

17A. Regard to be had to the purpose of Act.

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[16] The majority judgment of the Court of Appeal in *Yong Teck Lee* in holding that the CJA 1964 is a federal law which was intended by the Legislature to be read together with art. 121(1B) of the Federal Constitution had given a sound reasoning in its judgment *inter alia* as follows:

> It is argued that there is no provision concerning the Court of Appeal similar to that of Article 128 concerning the Federal Court, in particular clause (3):
>
> > The jurisdiction of the Federal Court to determine appeals from the Court of Appeal, a High Court or a judge thereof shall be such as may be provided by federal law.
>
> That provision was inserted by Act 26/1963, section 14 and came into force on 16 September 1963 (on the formation of Malaysia) replacing the earlier Article 128. It is argued that since there is no such provision regarding the Court of Appeal, federal laws cannot impose restrictions on the right of appeal to the Court of Appeal. In other words, all decisions of the High Court are appealable to the Court of Appeal.
>
> The question is whether because of the absence of a provision similar to Article 128(3) in respect of the Court of Appeal means that all decisions of the High Court are appealable to the Court of Appeal. That depends on whether the provisions of Articles 50, 67, 68 of the Courts of Judicature Act 1964 are valid and that depends on whether the provision of Article 121(1B) should be read restrictively or whether it should be read together with those sections.
>
> Sections 50 and 67 provide for the jurisdiction of the Court of Appeal in criminal and civil matters respectively. Section 68 goes further to provide matters which otherwise would be appealable under section 67 are not appealable. Both sections 50 and 67 were substituted for the old sections 50 and 67 by Act A886 and came into force on the same day as Act 885 that, *inter alia*, created the Court of Appeal, ie, 24 June 1994. Section 68 was also amended by Act A886. Subsection (1)(a) was amended by substituting for the words 'one hundred' the words 'two hundred fifty' and by deleting the words 'or a judge of the High Court'. Subsection (2) was deleted. Subsection (3) was amended by deleting the words 'or a judge of the High Court'. All these amendments came into force on the same day as Act A885, ie, 24 June 1994.
>
> So, clearly, these provisions of the Courts of Judicature Act 1964 and Article 121(1B) of the Constitution are intended to be read together. The intention of the Parliament cannot be clearer than that.

[17] It is also to be noted that the Court of Appeal in *Yong Teck Lee* went on further in explaining the interpretation of art. 121(1B) of the Federal Constitution by adopting the observation made by Steve Shim, CJSS in the case of *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 in respect of the interpretation of art. 121(2) of the Federal Constitution (which was held to be *pari materia* with art. 121(1B) of the Federal Constitution) as follows:

> If it was the intention of Parliament to confer jurisdiction on the Federal Court to hear appeals from all decisions of the Court of Appeal, the word 'all' or 'any' would have been included therein. The exclusion of those words, in my view, was clearly deliberate. It was intended that not all decisions are appealable.

[18] Finally, I would refer to the case of *Public Prosecutor v. Ottavio Quattrocchi* [2004] 3 CLJ 553 wherein on a similar issue this Court upheld the findings and decision of the Court of Appeal when invited to examine and interpret whether s. 37(6) of the Extradition Act 1947 allows further appeals. The Court of Appeal in *PP v. Ottavio Quattrocchi* [2003] 2 CLJ 613 held as follows:

> Do the words 'final and conclusive' mean that the orders are not appealable? We are of the view that the answer is obvious, ie, such orders are not appealable. We do not think that any other meaning could be given to the phrase.
>
> …
>
> We are of the view that, for the same reasons given by this Court in *Yong Teck Lee*'s case there is no right of appeal against an order of the High Court confirming the order of the Sessions Court discharging a fugitive criminal. The Legislature has made it very clear that that is what it wanted the law to be. It is not for the court to rewrite the law made by the Legislature. It is not the function. Neither should it encroach into the jurisdiction of the Legislature.

Conclusion

[19] For the reasons abovestated I would answer the two questions posed in this appeal in the negative. In the result I would dismiss the appeal with costs.

A **Mohd Ghazali Yusoff FCJ:**

[20] I have read the judgments of Zulkefli Ahmad Makinudin, FCJ and Suriyadi Halim Omar, FCJ and I agree that this appeal should be dismissed. However, as the matter has been debated at length, I think it is apt that I should endeavour to state the reasons which have led me to my conclusion.

[21] On 2 March 2011, this court granted the appellant leave to appeal on the following questions of law:

(i). Whether s. 31(2) of the Medical Act 1971 and s. 68(1)(d) of the Courts of Judicature Act 1964 are inconsistent with Article 121(1B) of the Federal Constitution and therefore void?

(ii). If the answer is in the affirmative, whether the Court of Appeal has unlimited jurisdiction to hear an appeal from a decision of the High Court made pursuant to s. 31(1) of the Medical Act 1971?

The Background

[22] The respondent, the Malaysian Medical Council ("the council") was established under s. 3(1) of the Medical Act 1971 ("the Act"). Section 29(1) of the Act provides the council shall have disciplinary jurisdiction over all persons registered under the Act and s. 29(2)(b) provides the council may exercise disciplinary jurisdiction over any registered person who "has been guilty of infamous conduct in any professional respect". Section 30(ii) of the Act provides that in the exercise of its disciplinary jurisdiction the council may order the name of such registered person to be suspended from the register for such period as it may think fit.

[23] Section 31(1) of the Act provides that any person who is aggrieved by any order made in respect of him by the council in the exercise of its disciplinary jurisdiction may appeal to the High Court, and the High Court may thereupon affirm, reverse or vary the order appealed against or may give such direction in the matter as it thinks proper. Section 31(2) of the Act reads:

The decision of the High Court upon such appeal shall be final.

[24] On 18 April 2006, the appellant was found to be guilty of infamous conduct in a professional respect under s. 29(2)(b) of the Act 1971 by the council premised upon an inquiry of a complaint made against the appellant for engaging in a sexual relationship with a patient who is the wife of the complainant. Consequently, the council ordered the appellant to "be suspended from the register under s. 30(ii) of the Medical Act 1971 for a period of two (2) years." The appellant appealed to the High Court pursuant to s. 31(1) of the Act.

The High Court

[25] On 26 February 2009 the High Court dismissed the appellant's appeal. The learned judge of the High Court held that there had been no breach of natural justice and there had been a proper appreciation of the evidence led during the disciplinary enquiry. The appellant appealed to the Court of Appeal.

The Court Of Appeal

[26] After hearing submission of counsel, the Court of Appeal reserved its decision to deliberate on a preliminary point raised in respect of the right of the appellant to appeal, *viz*, whether the appellant has a right to appeal to the Court of Appeal in the light of s. 31(2) of the Act which provides that the decision of the High Court in any appeal from the decision of the council in the exercise of its disciplinary jurisdiction shall be final. Subsequently, the Court of Appeal held that it did not have the jurisdiction to hear the appeal. The court also held that s. 31(2) of the Act is not rendered null and void as being contrary to art. 121(1B) of the Federal Constitution ("the Constitution").

Before This Court

[27] The main question for the determination of this court is whether art. 121(1B) of the Constitution renders s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 unconstitutional and therefore void by reason of alleged inconsistencies of the said statutes.

Submission By The Appellant

[28] At the outset of his submission, learned counsel for the appellant referred to art. 4(1) and art. 121(1B) of the Constitution, s. 68(1) of the Courts of Judicature Act 1964 and s. 31(2) of the Act.

[29] Article 4(1) of the Constitution reads:

> This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

[30] Article 121(1B) of the Constitution reads:

> There shall be a court which shall be known as the Mahkamah Rayuan (Court of Appeal) and shall have its principal registry in Kuala Lumpur, and the Court of Appeal shall have the following jurisdiction, that is to say:
>
> (a) jurisdiction to determine appeals from decisions of a High Court or a judge thereof (except decisions of a High Court given by a registrar or other officer of the Court and appealable under federal law to a judge of the Court); and
>
> (b) such other jurisdiction as may be conferred by or under federal law.

Article 160(2) of the Constitution provides "federal law" means:

> (a) any existing law relating to matter with respect to which Parliament has power to make laws, being a law continued in operation under Part XII; and
>
> (b) any Act of Parliament.

Section 3 of the Interpretation Acts 1948 and 1967 (Act 388) provides that an "Act" or "Act of Parliament" used with reference to legislation means a law made by Parliament and that the words "federal law" means" an Act of Parliament, and any other law in force in Malaysia or any part thereof which relates to a matter to which Parliament has power to make laws".

[31] Section 68(1) of the Courts of Judicature Act 1964 reads:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

As discussed earlier, s. 31(2) of the Act provides that the decision of the High Court upon such an appeal shall be final.

[32] The main argument canvassed by counsel for the appellant is that on a plain and ordinary interpretation of these constitutional and statutory provisions, s. 68(1) of the Courts of Judicature Act 1964 and s. 31(2) of the Act are inconsistent with the clear and unambiguous words in art. 121(1B) of the Constitution because they deny an unsuccessful litigant in proceedings before the High Court from appealing to the Court of Appeal and thus is contrary to the express words of art. 121(1B)(a). Based on this premiss, counsel submitted that these provisions are incapable of any other reasonable interpretation, and merely on this ground alone, the two questions posed by the appellant should be answered in the affirmative.

[33] Counsel for the appellant canvassed other arguments which included the following:

(a) the Constitution is a "living tree" and it "must be allowed to grow" and "the duty of the judges, as the interpreters of the Constitution, is to construe its terms in a broad and large way, avoiding narrow, pedantic, technical interpretation" (see *Edwards v. Attorney-General for Canada* [1930] AC 124);

(b) in *Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor (1)* [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72, the Supreme Court laid down vital principles of constitutional interpretation including the following as stated by Hamid Omar LP (at p. 709):

> Secondly, as the Judicial Committee of the Privy Council held in *Minister of Home Affairs v. Fisher* ([1980] AC 319) at p 329, a constitution should be construed with less rigidity and more generosity than other statutes and as *sui juris*, calling for principles of interpretation of its own, suitable to its character but not forgetting that respect must be paid to the language which has been used.

(c) that the court should interpret art. 121(1B) of the Constitution and "give it a broad, generous and liberal construction, befitting its place in the sui generis instrument that is the Federal Constitution";

(d) that "the fundamental liberty that the framers of the Constitution intended to protect when art. 121(1B) was drafted to provide for an appeal to the Court of Appeal against every decision of the High Court is the right of access to an appellate court";

(e) that "the right of access to court is not confined or limited to a party's right to sue in a court of first instance: it extends to challenging a decision of the High Court before the Court of Appeal".

[34] In the course of his submission, counsel for the appellant referred to *Yong Teck Lee v. Harris Mohd Salleh & Anor* [2002] 3 CLJ 422 which he pointed out also dealt with the effect of art. 121(1B) of the Constitution. The issue in that case is with regards to s. 36 of the Election Offences Act 1954 which provides that the decision of an election judge is final. One of the matters that arose for the determination of the Court of Appeal was whether s. 36 of the Election Offences Act 1954 which purported to exclude the jurisdiction of the Court of Appeal to hear an appeal from the final order of an election judge was inconsistent with art. 121(1B) of the Constitution thereby rendering it null and void by art. 4(1) of the Constitution. In a majority judgment, the Court of Appeal held that the decision of an election judge is not appealable. A member of that panel of the Court of Appeal, KC Vohrah JCA, dissented.

[35] Counsel then argued that the following passages from the judgment of KC Vohrah JCA would indicate why his dissent correctly represents the true constitutional position; at pp. 448-449 the learned judge said:

> Mr Gavan Griffith QC, counsel of the appellants, argues that the primary jurisdiction conferred under Article 121(1B)(a) upon the Court of Appeal is to hear appeals from decisions of the High Court or of a judge thereof. While the primary jurisdiction may be enlarged by virtue of Article 121(1B)(b) it is not to be abrogated, limited or restricted and any attempt to abrogate, limit or restrict the primary jurisdiction is void for inconsistency under Article 4(1) of the Constitution. Since Article 118 of the Constitution and ss. 32, 33 and 36 vest jurisdiction exclusively in the High Court to the extent that s. 36 purports to exclude the jurisdiction of the Court of Appeal, it is void and of no effect by virtue of Article 4(1) being inconsistent with Article 121(1B)(a) of the Constitution.
>
> I agree with the view and I also agree that cases decided before the date of the creation of the Court of Appeal, and which have been cited to us by counsel for the respondents, have to be considered in the context of the law as it stood before that date.

> To my mind we would have to view as pivotal the date 24 June 1991, the date of the coming into force of the Constitution (Amendment) Act 1994 (Act A885) which provided, *inter alia*, for the establishment of the Court of Appeal.

at p. 451:

> Next, we need to remind ourselves that in the scheme of the three superior court system the High Court is a court of first instance which is essentially a trial court (though it is a appellate court as well for appeals from the subordinate courts and it also possesses revisionary powers), more concerned with the finding of facts and with the application of the relevant law as the facts and justice of the case demand. A decision maker who is a finder of facts almost universally, especially in a court system, will not have his finding of facts disturbed unless the finding is perverse or there has been a misdirection which amounts to a mistake of law and that is rare. Otherwise it is a legal truism that if it is a pure finding of facts which does go up on appeal there is no likelihood of the matter succeeding in an appeal. It is in this area in the interpretation of the law or the application of the law that a decision maker may be in error and it is in this area that his decision commonly goes up on appeal for determination; the appeal will be on a question of law or on a mixed question of law and fact. The court that is most suitable to determine that is the Court of Appeal. All aggrieved litigants must be allowed to apply to the Court of Appeal for leave to appeal which then determines whether the grievances is purely a question of a finding of fact which the court will reject or whether the grievances is that. There is a misdirection on a question or law or a question of mixed law and fact where the Court of Appeal will decide that the grievance requires a looking into on appeal.";

and at pp. 452-453:

> ... It will be noted that it is not what s. 36 of the Election Act does; s. 36 completely bars an appeal as it provides that the determination after the election judge has made his determination upon a certificate of such a determination being given the determination is final. To the extent that s. 36 of the said Act purports to exclude the jurisdiction of the Court of Appeal to hear an appeal from a final order of an election judge, it is void and of no effect by operation of art. 4(1), it being inconsistent with art. 121(1B)(b) of the Constitution. Similarly, para (d) of s. 68(1) of the Courts of Judicature Act 1964 which purports to exclude the jurisdiction of the Court of Appeal by providing that where

A by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final no appeal shall be brought to the Court of Appeal, is void and of no effect.

B ... We do also have to remember the supremacy of the Constitution and that no common law principle nor historical reason nor federal or state law can override the Constitution and in the context of the clear words of art. 121(1B)(a) with effect from 24 June 1994, no one, to adopt the words of Lord Wilberforce in *Raymond v. Honey* [1983] 1 AC 1 at 12, should be C 'shut out from the seat of justice', here, I mean the Court of Appeal, if he is aggrieved with the decision of the High Court.

[36] For the aforesaid reasons as canvassed, counsel for the appellant submitted that the two questions posed in the instant appeal should be answered in the affirmative and that the matter D should be remitted to the Court of Appeal to hear the appellant's appeal on its merits.

Submission By The Respondent

E **[37]** In his submission, learned counsel for the council referred to several authorities including the case of *Public Prosecutor v. Datuk Harun bin Haji Idris & Ors* [1976] 1 LNS 180. In that case, Abdoolcader J (as he then was) adumbrated the principles in considering a challenge to the constitutional validity of an F impugned section of an Act; he said (at p. 117):

The question raised before me therefore resolves into the determination of the constitutional validity of section 418A of the Code in relation to the provisions of Article 8(1) of the Constitution.

G

Principles in considering the challenge to the constitutional validity of the impugned section.

In considering the matter in issue the principles to be borne in mind are three-fold:

H

Firstly, there is a presumption - perhaps even strong presumption - of the constitutional validity of the impugned section with the burden of proof on whoever alleges otherwise.

Secondly, the presumption is not however to be carried to the I extent or stretched for the purpose of validating an otherwise invalid law, and if the force of Article 8(1) bears sufficiently strongly upon and against that presumption, it must then necessarily bend, break and give way under that force.

> And thirdly, for this purpose a statute or statutory provision must be examined on its own merits and not by comparison with other similar provisions (*State of Madhya Pradesh v. G.C. Mandawar* (AIR 1954 S.C. 493).

[38] Counsel for the Council then referred to the majority judgment of the Court of Appeal in *Yong Teck Lee*, *supra*, where Abdul Hamid Mohamad JCA (as he then was), in delivering the majority judgment of the court, ruled that the decision of an election judge is not appealable to that court and hence dismissed the appeal. As to the approach in interpreting the Constitution, the learned judge said (at p. 436):

> Of late, the present Federal Court has adopted the 'purposive approach' of interpreting the Constitution relying, in particular, on the provision of s. 17A of the Interpretation Acts 1948 and 1967 (Act 388). The judgment of Mohamed Dzaiddin FCJ (as he then was) in *Lam Kong Co. Ltd. v. Thong Guan Co. Ptd. Ltd* [2000] 3 CLJ 769 (FC) is one such example. This judgment was followed in *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn. Bhd. & Anor* [2002] 2 CLJ 57 (FC). Haidar Mohd. Noor FCJ, delivering the judgment of the Federal Court, said at p. 69 of the report:
>
> > This purposive approach has now been given statutory recognition by our Parliament enacting s. 17A in the Interpretation Acts 1948 and 1967 (Act 388) which reads:
> >
> > > In the interpretation of a provision of an Act, a construction that would promote the purpose of object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.
> >
> > Recently, the Federal Court in a majority judgment in *Lam Kong Co Ltd v. Thong Guan Co Pte Ltd* [2000) 3 CLJ 769 Mohamed Dzaiddin, FCJ, (now CJ Malaysia) took the purpose or object of the legislature as provided by s. 17A of the Interpretation Acts 1948 and 1967 (Act 388) for the construction of s. 68(1)(a) of the CJA on the "filter" principle. In view of the statutory recognition we can and should adopt a purposive approach in the interpretation of "Ruler" for the purposed of arts. 181, 182 and 183.
>
> It should be noted that in Lam Kong Co Ltd the Federal Court adopted the purposive approach in considering s. 68(a) of the Courts of Judicature Act 1964, one of the sections presently under consideration. I shall adopt the same approach.

[39] In his grounds of judgment in *Yong Teck Lee*, Abdul Hamid Mohamad JCA also referred to *Dason Gaban v. Zulkifle bin Majun and 21 Other Cases* [1982] 1 LNS 41. In *Dasan Gaban*, a number of election petitions were presented in the High Court at Kota Kinabalu, Sabah. The applicants applied to strike out the petitions but that was rejected by the High Court. The appellants appealed to the Federal Court. The Federal Court dismissed the appeal on a preliminary objection on the ground that the court has no jurisdiction to hear the appeal. Abdul Hamid Mohamad JCA said (at p. 442):

> Suffian LP, sitting with Lee Hun Hoe (CJ Borneo) and Hashim Yeop A. Sani J (as he then was), delivering the judgment of the court, said:
>
> > We dismissed these appeals because there is no inherent right of appeal to us, such a right if any must be granted by statute, and if there is any right of appeal at all it must be under s. 67(1) of the Courts of Judicature Act. That section provides:
> >
> > > (1) The Federal Court shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

[40] After analysing arts. 121(1B) and 128 of the Constitution and ss. 50, 67 and 68 of the Courts of Judicature Act 1964 Abdul Hamid Mohamad JCA said (at p. 445-446):

> So, clearly, these provisions of the Court of Judicature Act 1964 and art. 121(1B) of the Constitution are intended to be read together. The intention of Parliament cannot be clearer than that.
>
> …
>
> Furthermore, the observation made by Steve Shim CJ (Sabah & Sarawak) in *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 (FC) supports this view. Even though the learned Chief Judge was interpreting art. 121(2), as has been pointed out, the wording of cl. (2) and cl. (1B), in so far as they are material for the present discussion, is identical.
>
> …

> ... It is the federal law, ie, the Court of Judicature Act 1964 that provides for such requirements, not the Constitution. This, to my mind, shows that the provision of the Constitution should be read together with the provisions of the Courts of Judicature Act 1964. To hold otherwise would lead to a conclusion that even ss. 50, 67 and 68 of the Courts of Judicature Act 1964 are void and unconstitutional. It means that all decisions of the High Court are appealable to the Court of Appeal. With respect, I do not think that art. 121(1B), even in the absence of a provision similar to art. 128(3), being a general provision, can be read in such a restrictive way.

[41] The learned judge also referred to *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 where Steve Shim CJ (Sabah & Sarawak) said (at p. 660):

> In my view, art. 121(2) Federal Constitution is a general provision relating to the jurisdiction of the Federal Court. It is an empowering provision which states that the Federal Court shall have jurisdiction to determine appeals from decisions of the Court of Appeal and the High Court. It is pertinent to note the conspicuous absence of the word "all" or "any" preceding the word "decisions" in the provision. If it was the intention of Parliament to confer jurisdiction on the Federal Court to hear appeals from all decisions of the Court of Appeal, the word "all" or "any" would have been included therein. The exclusion of those words, in my view, was clearly deliberate. It was intended that not all decisions are appealable. Furthermore, whilst art. 121(2) Federal Constitution is of general import on the jurisdiction of the Federal Court, art. 128(3) thereof is more specific. It states:
>
> > (3) The jurisdiction of the Federal Court to determine appeals from the Court of Appeal, a High Court or a Judge thereof shall be such as may be provided by federal law.
>
> Quite clearly, the two articles have to be read in tandem. There can be no dispute that the statute conferring jurisdiction on the Federal Court concerning appeals in civil matters is the Courts of Judicature Act 1964. That is the statute envisaged in art. 128(3) Federal Constitution in the words "provided by federal law" stipulated therein.

[42] Counsel for the council pointed out that the strong presumption of constitutionality of s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 has not been

rebutted by the appellant. He argued that the cases of *Public Prosecutor v. Datuk Harun bin Haji Idris & Ors, Megat Najmuddin* and *Yong Teck Lee* have established that there is a strong presumption that s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 are *intra vires* the Constitution, including art. 121(1B)(a) of the same.

[43] Counsel for the Council further argued that art. 121(1B)(a) of the Constitution confers "jurisdiction" on the Court of Appeal in the narrow sense that the Court of Appeal has authority to decide appeals and in relation to this argument referred to *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 where Augustine Paul FCJ held that the word "jurisdiction" in art. 121(2)(a) of the Constitution is to be given a narrow and strict meaning as the court's authority and power to hear and determine appeals and not to be construed in a wide sense to mean the manner as to how the court's power to hear and determine appeals is to be exercised.

[44] Premised on *Eric Chia*, counsel for the Council submitted that the word "jurisdiction" in art. 121(1B)(a) of the Constitution should be similarly given a narrow meaning, *viz.*, it merely confers the Court of Appeal's authority and power to hear and determine appeals and that it does not provide for the Court of Appeal to hear "all" or "any" appeals from the High Court.

[45] Counsel for the council then contended as follows:

> ... how the Court of Appeal's jurisdiction to hear appeals from the High Court should be exercised, is decided solely by the Courts of Judicature Act. It is to be noted that the Courts Judicature Act is not similar to any Act of Parliament as is clear from Section 4 of the Courts of Judicature Act 1964 ... as follows:
>
> > In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.
>
> In other words, the Courts of Judicature Act being a principal statute governing the jurisdiction of the Federal Court, the Court of Appeal and the High Court, prevails over all other written law other than the Federal Constitution.

> Accordingly, a purposive interpretation of Article 121(1B)(a) of the Federal Constitution means that Article 121(1B)(a) must be construed together with Section 68(1)(d) of the Courts of Judicature Act 1964. If otherwise, this will render unconstitutional not only Section 31(1) of the Medical Act 1971 but a host of statutory provisions whereby the Parliament has expressly provided for the High Court to be the final arbiter of disputes.

[46] Premised on the aforesaid arguments, counsel for the council concluded that "it is precisely the intention of the legislature to have art. 121(1B) of the Federal Constitution read with s. 68(1)(d) of the Courts Judicature Act 1964 and ultimately empower the High Court as the sole and final judge on the question of appeals for medical enquiries" and as such there can be no appeal from a decision of the High Court.

My Reasons For Dismissing The Instant Appeal

[47] In the *Sussex Peerage* Case (1844) 11 Cl & Fin 85, Tindal CJ said:

> ... the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

I would say that the aforesaid rule in relation to the construction of an Act of Parliament is still good today.

[48] A statute is the written will of the legislature. It is the fundamental rule of interpretation of a statute that it should be expounded according to the intent of Parliament. Courts must use the literal rule where a clear meaning of a statute will allow it, ie, interpret the statute literally, according to its ordinary plain meaning. In the event of the words of the statute being precise and unambiguous in themselves, it is only just necessary to expound those words in their natural and ordinary sense. Statutes generally have the power to change the established common law but the common law cannot overrule or change statutes. Judges must normally apply statutes, even if they are contrary to established common law. The task of a judge is to interpret and

apply the statute – they cannot disregard it or declare it to be "unconstitutional". In an article titled *"The Constitutionalisation of Public Law"* published in May 1999, the Rt Hon Lord Steyn, Lord of Appeal in Ordinary said:

> Parliament has the sovereign legal power to legislate as it thinks fit. The courts will give effect to the clearly expressed will of Parliament. The courts have said so on countless occasions. On the other hand, it is of fundamental constitutional importance that the courts must interpret and apply legislation on the assumption that Parliament does not write on a blank sheet.

[49] In the instant appeal, the Act makes it clear that such was the intention of Parliament, *viz*, that there be no further appeal from the High Court. The proceedings before the council were not criminal proceedings. Disciplinary proceedings fall on the civil side. The primary purpose of legislation that regulates conduct by members of a profession is the protection of public health and safety and to ensure that persons who are unfit to practice are prevented from doing so (see *Reyes v. Dental Board of South Australia* (2002) 83 ASR 551 at p. 559). The primary purpose of professional disciplinary proceedings is not to punish, but to protect the public, to maintain public confidence in the integrity of the profession, and to uphold proper standards of behaviour (see *Bolton v. Law Society* [1994] 1 WLR 512, 518, per *Sir Thomas Bingham MR; Gupta v. General Medical Council* [2002] 1 WLR 1691, para 21, per Lord Rodger).

[50] At the end of the day it is the council and not the courts that have the professional expertise to determine whether the conduct of their peers fall within the contemplation of the words "infamous conduct in any professional respect" appearing in s. 29(2)(b) of the Act. The function of the council is to adjudicate, not to prosecute, a complaint of "infamous conduct in any professional respect". In an appeal from the order made by the council, the High Court can of course depart from the decision of the council for cogent reasons. Section 31(2) of the Act makes it clear that the High Court shall be the court of final appeal. There the word "final" means that there can be no appeal from that decision and that decision is unalterable. It has been held that as long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very

essence of due process. The legislative intention was clear, namely, that the legislature never wanted a second appeal in cases of this genre. Matters or controversies in cases of this genre should not drag on indefinitely. Finality is absolutely important because that gives certainty to the law and that justice has been administered in accordance with the law.

[51] I agree with the majority decision in *Yong Teck Lee* that the Courts of Judicature Act 1964 is a federal law which was intended by the legislature to be read together with art. 121(1B) of the Constitution. I would agree with the submission of counsel for the council that reading art. 121(1B) of the Constitution with s. 68 of the Courts of Judicature Act 1964 and premised on the clear and unequivocal wordings of s. 31(2) of the Act, the decision of the High Court is final and not appealable. Section 68(1)(d) of the Courts of Judicature Act 1964 clearly provides that no appeal shall be brought to the Court of Appeal where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final. The Act is an Act of Parliament and hence fall within the meaning of "federal law" as provided for in art. 160(2) of the Constitution. Article 121(1B) confers jurisdiction on the Court of Appeal to determine appeals from the decision of a High Court or a judge thereof and such other jurisdiction as may be conferred by or under federal law. The Act is a federal law and s. 31(2) of the Act clearly provides that the decision of the High Court upon an appeal from the respondent shall be final.

[52] Being a creature of statute, the Court of Appeal has no power to enlarge its jurisdiction. Since the decision of the High Court under s. 31(2) of the Act is final, the Court of Appeal has no power to enlarge its jurisdiction by hearing such an appeal. Such an appeal before that court would be incompetent. For the aforesaid reasons, I would hold that the decision of the Court of Appeal in the instant appeal, *viz.*, that it did not have the jurisdiction to hear the appeal by the appellant is correct. The Court of Appeal properly appreciated the applicable law to arrive at a judicious decision.

[53] On the whole, I cannot see how it can be said or suggested that s. 31(2) of the Act and s. 68(1)(d) of the Courts of Judicature Act 1964 are inconsistent with art. 121(1B) of the Constitution. Statutes should be interpreted, wherever possible, as to give effect to all of them. That is what is known as the rule of harmonious construction.

[54] For the aforesaid reasons, I would answer the first question posed in the negative. That being my decision, I dare say that the second question abates and need not be answered at all. This appeal must be dismissed with costs.

Suriyadi Halim Omar FCJ:

[55] Having had the opportunity of perusing Zulkefli Ahmad Makinudin FCJ's draft judgment, I agree with his view. That being so I see no further need to duplicate the reasons supplied by him except to touch briefly on the argument of learned counsel for the appellant that the Constitution confers the Court of Appeal an unqualified primary appellate jurisdiction in determining appeals from the High Court.

[56] To ensure clarity in my explanation by necessity, I reproduce s. 31(2) of the Medical Act 1971 (the Act) and s. 68(1)(d) of the Courts of Judicature Act 1964. Section 31 of the Act reads:

> Appeal against orders of the Council.
>
> (1) Any person who is aggrieved by any order made in respect of him by the Council in the exercise of its disciplinary jurisdiction may appeal to the High Court, and the High Court may thereupon, affirm, reverse or vary the order appealed against or may give such direction in the matter as it thinks proper; the cost of the appeal shall be in the discretion of the High Court.
>
> (2) The **decision of the High Court upon such appeal shall be final.**

[57] The impugned finality clause is the said s. 68(1) of the Courts of Judicature Act 1964, which reads:

> Non-appealable matters.
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) …;
>
> (b) …;
>
> (c) …; and
>
> (d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

[58] The appellant contended that his right of appeal to the Court of Appeal is conferred by art. 121(1B) of the Federal Constitution and it legislates thus:

> (IB) There shall be a court which shall be known as the Mahkamah Rayuan (Court of Appeal) and shall have its principal registry at such place as the Yang di-Pertuan Agong may determine, and the Court of Appeal shall have the following jurisdiction, that is to say:
>
> (a) jurisdiction to determine appeals from decisions of a High Court or a judge thereof (except decisions of a High Court given by a registrar or other officer of the Court and appealable under federal law to a judge of the Court); and
>
> (b) such other jurisdiction as may be conferred by or under federal law.

[59] Learned counsel for the appellant had submitted in this manner:

> A plain reading of Art 121 (1B) reveals that the Constitution confers on the Court of Appeal an unqualified primary appellate jurisdiction in determining appeals from the High Court as there is nothing further in Chapter 1X of the Constitution that limits this unqualified appellate jurisdiction.

[60] He ventilated that the words "the Court of Appeal shall have the following jurisdiction, that is to say-(a) jurisdiction to determine appeals from decisions of a High Court or a judge thereof …" embedded in art. 121 (1B) conferred that unqualified right. He added that as s. 31 of the Act prevents an appeal to the Court of Appeal, and s. 68 of the Courts of Judicature Act puts it into effect, then both provisions must be void for being inconsistent with the above article.

[61] Without the necessity of repeating Zulkefli Ahmad Makinudin FCJ's view, I need only to touch on the words "that is to say". *Stroud's Judicial Dictionary of Words and Phrases*, 6th edn at 2646 when explaining the latter phrase said:

> "That is to say" is the commencement of an ancillary clause which explains the meaning of the principal clause (see also *State of Tamil Nadu v. Pyare Lal Mahotra* AIR 1976 SC 800/843).

[62] *Words Phrases and Maxims* by Anandan Krishnan at 87 authors:

> The expression 'that is to say' is employed to make clear and fix the meaning of what is to be explained or defined.

[63] *N Krishnaraju v. Authorised Officer Land Reforms* AIR 1967 Mad 352 in same vein reported:

> ... we do not think that the words "that is to say" justify a different construction. In our opinion those words are merely illustrative and not restrictive or limitative.

[64] Having construed the words expressed, it is my view that the words "jurisdiction to determine appeals from decisions of a High Court" are not substantive laws that lay down the unqualified primary appellate jurisdiction of the Court of Appeal as suggested by the appellant, but mere illustrations. The words "that is to say" which come after the words "The Court of Appeal shall have the following jurisdiction", supplied the instances which may furnish guidance and clue as to its appeal jurisdiction (*Brij Bhukan v. S.D.O* AIR 1955 Patna 1(15)).

[65] The curtailment of his rights to appeal to the Court of Appeal therefore is not contrary to art. 121(1B), as the illustrations show that a Court of Appeal shall have the jurisdiction to determine appeals that come from the High Court and such other jurisdiction, subject to being conferred with jurisdiction under any federal law. The Constitutional illustration granted a choice, with room to proceed to the Court of Appeal, but Parliament as reflected in the two provisions, had stopped short of it. Why it stopped short there is not for this court to delve into. Suffice to say, without any conferment of jurisdiction the Court of Appeal is deprived of that jurisdiction to determine all appeals from the High Court under this Act; it can never be interpretatively right that an illustration can be construed as substantive law.

[66] Having been satisfied that there is no inconsistency in the two provisions with art. 121(1B) of the Constitution, and in agreement with the view of my learned brother Zulkefli Ahmad Makinudin FCJ as per his draft judgment, I would dismiss this appeal with costs.